

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

v.

BRIAN BREWER,

Defendant.

Case No. 2:15-cr-00301-HDM-VCF

ORDER

Before the court is a motion for reduction of sentence pursuant to 18 U.S.C. § 3582(c)(1)(A) (ECF No. 79), filed by the defendant, Brian Brewer ("Brewer"). Pursuant to Second Amended General Order 2020-06, the Federal Public Defender has filed a "Notice of Non-Supplementation" (ECF No. 83). The government has opposed (ECF No. 84). Brewer has not filed a reply, and the time for doing so has expired.

Brewer was charged in this case with one count of receipt of child pornography and one count of possession of child pornography. (ECF No. 15). Pursuant to a plea agreement, Brewer pleaded guilty to receipt of child pornography, and the government dismissed the possession charge. (ECF Nos. 22, 28 & 42). Brewer was sentenced to a term of 210 months in custody. (ECF No. 43). Brewer's current estimated release date is September 5, 2030.¹ He now moves for a reduction of sentence pursuant to the provisions of § 3582(c)(1)(A).

¹ See <https://www.bop.gov/inmateloc/> (last accessed May 10, 2024).

1 Section 3582(c)(1)(A) provides, in relevant part:

2 [T]he court, . . . upon motion of the defendant after
3 the defendant has fully exhausted all administrative
4 rights to appeal a failure of the Bureau of Prisons to
5 bring a motion on the defendant's behalf or the lapse of
6 30 days from the receipt of such a request by the warden
7 of the defendant's facility, whichever is earlier, may
8 reduce the term of imprisonment (and may impose a term

9 of probation or supervised release with or without
10 conditions that does not exceed the unserved portion of
11 the original term of imprisonment), after considering
12 the factors set forth in section 3553(a) to the extent
13 that they are applicable, if it finds that--

14 (i) extraordinary and compelling reasons warrant such a
15 reduction;

16 . . .

17 and that such a reduction is consistent with applicable
18 policy statements issued by the Sentencing Commission.²

19 The applicable policy statement is set forth in U.S.S.G.
20 § 1B1.13.³ Section 1B1.13 provides, in relevant part, that a
21 § 3582(c)(1)(A) motion may be granted upon a finding that: (1)
22 extraordinary and compelling reasons warrant a reduction; (2) the

23 ² In addition to "extraordinary and compelling reasons," the court
24 may grant a motion if "the defendant is at least 70 years of age,
25 has served at least 30 years in prison, pursuant to a sentence
26 imposed under section 3559(c), for the offense or offenses for
27 which the defendant is currently imprisoned, and a determination
28 has been made by the Director of the Bureau of Prisons that the
defendant is not a danger to the safety of any other person or the
community, as provided under section 3142(g)." 18 U.S.C. §
3582(c)(1)(A)(ii). Brewer has not served more than thirty years in
prison and is not at least 70 years old, so this provision does
not apply.

³ *United States v. Aruda*, 993 F.3d 797, 801-02 (9th Cir. 2021),
which held that the version of § 1B1.13 then in effect was not an
"applicable policy statement" binding on the courts, no longer
controls following the November 2023 amendments to § 1B1.13. See
United States v. Eklund, 2024 WL 623903, at *1 (D. Alaska Feb. 14,
2024); *United States v. Arcila*, 2024 WL 578688, at *2 (D. Or. Feb.
12, 2024); *United States v. Ashcraft*, 2024 WL 519966, at *1 (E.D.
Cal. Feb. 9, 2024).

1 defendant is not a danger to the safety of any other person or to
2 the community, as provided in 18 U.S.S. § 3142(g): and (3) the
3 reduction is consistent with the policy statement.

4 A defendant is not entitled to be present for any hearing on
5 a motion for compassionate release. See Fed. R. Crim. P. 43(b)(4).

6 The government does not dispute that Brewer properly
7 exhausted his motion. (ECF No. 84 at 4 n.3). The motion may
8 therefore be considered by the court.

9 Brewer asserts that extraordinary and compelling reasons
10 exist based on his medical conditions and the corresponding
11 heightened risk of a COVID-19 infection, an alleged need to act as
12 caregiver for his mother, stepfather and grandmother, his
13 rehabilitation while incarcerated, and the conditions in his
14 institution. The government argues that none of these grounds meets
15 the requirements for relief set forth in § 1B1.13 and they are not
16 extraordinary and compelling.

17 Brewer asserts that he has the following medical conditions:
18 (1) polyneuropathy; (2) orthostatic hypotension; (3) varicose
19 veins; (4) an enlarged prostate; (5) gastro-esophageal reflux
20 disease; (6) premature atrial contraction; (7) psychotic disorder
21 with hallucination; and (8) major depression disorder. He also
22 argues that his medical conditions put him at a higher risk of
23 complications if he were to contract COVID-19.

24 U.S.S.G. § 1B1.13(b)(1) identifies as potential extraordinary
25 and compelling reasons the medical circumstances of the defendant
26 if the defendant is suffering from (A) "a terminal illness," (B)
27 "a serious physical or medical condition . . . that substantially
28 diminishes the ability of the defendant to provide self-care within

1 the environment of a correctional facility and from which he or
2 she is not expected to recover," or (C) "a medical condition that
3 requires long-term or specialized medical care that is not being
4 provided and without which the defendant is at risk of serious
5 deterioration in health or death." Extraordinary and compelling
6 reasons may also exist where

7 the defendant is housed at a correctional facility
8 affected or at imminent risk of being affected by (I) an
9 ongoing outbreak of infectious disease, or (II) an
10 ongoing public health emergency declared by the
11 appropriate federal, state, or local authority, (ii) due
12 to personal health risk factors and custodial status,
13 the defendant is at increased risk of suffering severe
14 medical complications or death as a result of exposure
15 to the ongoing outbreak of infectious disease or the
16 ongoing public health emergency described in clause (i);
17 and (iii) such risk cannot be adequately mitigated in a
18 timely manner.

19 U.S.S.G. § 1B1.13(b) (1) (D).

20 Brewer's medical conditions do not meet any of these
21 circumstances. Brewer does not allege that he has been diagnosed
22 with a terminal illness, that he is substantially diminished in
23 his ability to provide self-care, or that he requires long-term or
24 specialized medical care that is not being provided. Further, the
25 COVID-19 epidemic is no longer a national emergency, there is no
26 ongoing or imminent risk of an outbreak at Brewer's facility given
27 that there are currently no covid cases reported there, see
28 [https://www.bop.gov/about/statistics/statistics_inmate_covid19.j](https://www.bop.gov/about/statistics/statistics_inmate_covid19.jsp)
[sp](https://www.bop.gov/about/statistics/statistics_inmate_covid19.jsp) (last visited May 10, 2024), and Brewer is vaccinated against
the virus. Brewer's contention that vaccination increases the risk
of infection is unsupported. Accordingly, at this time, § 1B1.13(b)
does not support a finding of extraordinary and compelling reasons
on the basis of Brewer's medical circumstances.

1 Next, Brewer asserts that his step-father is incapacitated
2 due to knee replacement surgery on both knees, that while his
3 mother is caring for his step-father, she is recovering from
4 rotator-cuff surgery, that his grandmother has dementia and needs
5 daily care, and that he needs to be released to take care of them.

6 U.S.S.G. § 1B1.13(b)(3)(C) identifies as potential
7 extraordinary and compelling reasons "[t]he incapacitation of the
8 defendant's parent when the defendant would be the only available
9 caregiver for the parent." Section 1B1.13(b)(3)(D) provides that
10 in some situations, such circumstances may exist with respect to
11 a grandparent of the defendant.

12 Brewer's allegations regarding his family circumstances do
13 not amount to extraordinary and compelling reasons. Brewer does
14 not support his claim that his mother and grandmother are
15 incapacitated. And even assuming the truth of Brewer's
16 allegations, if Brewer's step-father is incapacitated at all, it
17 is only temporary. Finally, Brewer does not allege that he is the
18 only available caregiver for any of the identified individuals,
19 particularly as he admits that his mother is taking care of his
20 stepfather. Section 1B1.13(b)(3) does not provide a basis for
21 relief.

22 Brewer next argues that his facility has had numerous issues,
23 including understaffing and two inmate deaths, and that this should
24 justify his early release. Brewer's allegations in this regard do
25 not rise to the level of extraordinary and compelling.

26 Finally, Brewer points to his rehabilitation while
27 incarcerated, including his clean record, continued employment,
28 completion of numerous classes, a designation of low risk to

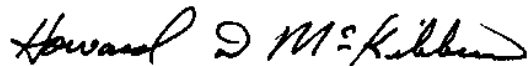
1 recidivate, mentoring of other inmates and involvement in a
2 religious organization. While these efforts are commendable, the
3 court does not find that these circumstances, alone or in
4 combination with the other factors, rise to extraordinary and
5 compelling reasons justifying relief.

6 The court has also considered the relevant 18 U.S.C. § 3553(c)
7 factors and concludes that, even if extraordinary and compelling
8 reasons existed, Brewer's sentence must remain at 210 months in
9 light of the nature and circumstances of the offense and the
10 history and characteristics of the defendant - including his
11 substantial criminal history that includes molestation of a child
12 -- the need for the sentence imposed to reflect the seriousness of
13 the offense, to promote respect for the law, and to provide just
14 punishment for the offense, to afford adequate deterrence to
15 criminal conduct, and to protect the public from further crimes of
16 the defendant, and to avoid unwarranted sentence disparities.

17 In accordance with the foregoing, IT IS THEREFORE ORDERED
18 that Brewer's motion for reduction of sentence under 18 U.S.C. §
19 3582(c)(1)(A) (ECF No. 79) is DENIED.

20 IT IS SO ORDERED.

21 DATED: This 10th day of May, 2024.

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23 

24 UNITED STATES DISTRICT JUDGE
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